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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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NIXON & VANDERHYE PC
1100 NORTH GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201

EXAMINER

DICKENS, CHARLENE

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 04/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/424086

Applicant(s)

Kohn

Examiner

Dickens

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 12-20-01

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-48 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-48 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19-28 and 35-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 35 and 48 do not positively recite method steps. Claim 44 preamble does not match that of claim 19.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-28 and 35-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Konzelmann. Konzelmann teaches a flow amount measuring apparatus comprising: a fluid temperature detector R_K ; a heater R_H controllable to a reference temperature R_1 which is either one of a fixed temperature and a variable temperature responsive to the fluid temperature detected by the fluid temperature detector; a flow amount detector R_s disposed at either one of an upstream side and a downstream side of the heater with respect to a direction of fluid flow and changes its

temperature in response to the fluid flow amount and the fluid flow direction; and a detecting means (col. 3, lines 3-24) for detecting the fluid flow amount variable with the fluid flow direction from the temperature detected by the fluid amount detector; wherein the detecting means is for producing an output corresponding to a difference between the temperature detected by the fluid amount detector and a fixed temperature and the temperature detected by the fluid temperature detector and varying in dependence on a temperature difference between the predetermined temperature and the temperature detected by the flow amount detector (col. 3, lines 25-60); substrate 15 on which the fluid temperature detector, the fluid amount detector and the heater are formed, the substrate having slits 50 at the upstream side of the flow amount detector and the downstream side of the heater and a cavity underneath the fluid temperature detector (col. 3, lines 60-68). The steps in the claimed method of claims 35-41 and 43 are deemed to be clearly anticipated by the functions of the structure of the apparatus discussed above.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be

negatived by the manner in which the invention was made.

6. Claims 11-16, 29-34 and 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konzelmann in view of Hiromasa et al. (US Pat 4,399,698). Claims differ from Konzelmann with the recitation of a second temperature detector. Hiromasa et al. discloses a second temperature detector 12 for the purpose of decreasing heat consumption and heat loss and thus improving the accuracy of gas flow measurement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second temperature detector in Konzelmann as taught by Hiromasa et al. for the purpose of decreasing heat consumption and heat loss and thus improving the accuracy of gas flow measurement. The steps in the claimed method of claims 35-41 and 43 are deemed to be clearly obvious by the functions of the structure of the combination discussed above.

7. Applicant's arguments filed 12/20/01 have been fully considered but they are not persuasive. Applicant argues Konzelmann flow amount detector is not disposed either upstream or downstream of the heater resistance. The Examiner does not agree with this argument. Fig. 1 clearly illustrates flow amount detector is disposed downstream of the heater resistance. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the


features upon which applicant relies (i.e., accurately measure the true net fluid flow amount) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Accordingly, Konzelmann singularly or in combination clearly teaches and suggests the applicant's claimed invention.


8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the

date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Dickens whose telephone number is (703) 305-7047. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist or the customer service representative whose telephone numbers are (703) 308-0956 or (703) 308-4800 respectively. The fax numbers are (703) 305-3431 and (703) 305-3432.


cd/dickens
March 25, 2002


Benjamin R. Fuller
Supervisory Patent Examiner
Technology Center 2800